

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

In the Matter of:

MARIST COLLEGE

Employer,

Case No. 03-RC-127374

and

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 200 UNITED,

Petitioner.

**EMPLOYER'S EXCEPTIONS TO THE HEARING
OFFICER'S REPORT ON CHALLENGES TO THE RERUN ELECTION**

Respectfully submitted,
BOND, SCHOENECK & KING, PLLC
Attorneys for Marist College
600 Third Avenue, 22nd Floor
New York, NY 10016-1915
T: 646.253.2300
F: 646.253.2301

Of Counsel:
Raymond J. Pascucci
Louis P. DiLorenzo
Tyler T. Hendry

PRELIMINARY STATEMENT

Marist College ("Marist") hereby takes exception to each of the following findings, legal conclusions and/or recommendations contained in the Hearing Officer's Report on Challenges to the Rerun Election issued by Neale Sutcliff on January 3, 2017 (the "Rerun Report"):

THE CHALLENGED BALLOTS

1. The finding that the Stipulated Election Agreement clearly and unambiguously excludes adjuncts who also hold another position at Marist (i.e., dual-function employees). (Rerun Report at p. 8) (see Section A(1)-(4) of the Employer's Brief in Support of its Exceptions ["Exception's Brief"] for an explanation of why this interpretation is erroneous).

2. The finding that the Stipulated Election Agreement does not clearly and unambiguously include all adjuncts regardless of other positions held with the Employer. (Rerun Report at p. 8) While the Employer contends that the Hearing Officer should have found the Stipulated Election Agreement is clear and unambiguous in stating that all adjuncts are eligible to vote, at the very least the Hearing Officer should have found the Stipulated Election Agreement to be ambiguous based on the parties' differing interpretations. This failure resulted in the failure to apply the second and/or third step in the Board's three-step test for resolving challenges in a stipulated election. (see Section A(2)-(4) of the Employer's Brief for further explanation of the Hearing Officer's incorrect interpretation and the appropriate application of steps two and three of this test).

3. The finding that the language of the Stipulated Election Agreement is carefully tailored to exclude all individuals whose “primary role” with the Employer is not as an adjunct. (Rerun Report at p. 8) (see Part I, Section A of the Employer’s Brief for further explanation of why this unsupported finding is erroneous). Additionally, even if the Hearing Officer’s finding was not erroneous, the Hearing Officer failed to apply this misguided “primary role” interpretation. (see Section A for further explanation of how the Hearing Officer failed to properly apply the “primary role” interpretation).

4. The apparent finding that the language at the end of the Stipulated Election Agreement “regardless of whether or not they have teaching responsibilities modifies all job titles listed in the Stipulated Election Agreement and not just “all other employees.” (Rerun Report at p. 8) (see Section A(2) for explanation of why this finding was erroneous).

5. The apparent conclusion, based on the Hearing Officer’s failure to properly consider the burden of proof for excluding challenged voters, that the Union met its burden regarding the employees it challenged. (Rerun Report at p. 8) (see Section A(4) for explanation of why this finding was erroneous).

6. The conclusion, based on the Hearing Officer’s failure to properly analyze the Stipulated Election Agreement and/or apply the Board’s community-of-interest analysis as applied to dual function employees in the context of college adjunct faculty members that the following 34 dual function employees were ineligible to vote: 1. John Ansley, 2. Christopher Bowser, 3. Kathy Butsko, 4. Stephanie Calvano, 5. Jeffrey Carter, 6. Peter Colaizzo, 7. Toni Constantino, 8. Richard Cusano, 9. Joseph Ellman, 10. Freddimir Garcia, 11. Brian Gormanly, 12. Mary Elana Griffith, 13. Justin Guiliano,

14. Clarence Johnson, 15. Colleen Kopchik, 16. Cecil Lee, 17. Fan Li, 18. Jennifer McMillan, 19. Michael Napolitano, 20. David Nash, 21. Corri Nicoletti, 22. Sara Nowlin, 23. John Pinna, 24. Adam Porter, 25. Mary Rice, 26. Adam Ritter, 27. William Robelee, 28. Diedre Sepp, 29. Timothy Smith, 30. Keturah Springate-Lewis, 31. Jared Todisco, 32. Karen Tomkins-Tinch, 33. Laura Toonkel, and 34. Robin Elliott. (Rerun Report, p. 8-27, 40) (See Section A(1)-(4) of the Exception's Brief for an explanation of why these findings were erroneous).

7. The finding that there was insufficient record evidence to show that John McCormick resigned from his adjunct position prior to the election and was therefore eligible to vote. (Rerun Report, p. 46-47) (see Section B(1) of the Exception's Brief for an explanation of why this finding was erroneous).


8. The finding that it was relevant that John McCormick's resignation took the form of a single conversation and did not involve written documentation in determining there was insufficient record evidence. (Rerun Report, p. 47) (see Section B(1) for an explanation of why this finding was erroneous).

9. The finding that there was insufficient record evidence to show that Anna Dellomo continued to be employed by Marist at the time of the election in October 2016 and was therefore eligible to vote. (Rerun Report, p. 31-33) (see Section B(2) of the Exception's Brief for an explanation of why this finding was erroneous).

10. The finding that Dean Goddard had a reasonable expectation of recall after he was laid off from Marist College and was therefore eligible to vote (Rerun Report, p. 42-44) (see Section C(1) of the Exceptions Brief for an explanation of why this finding was erroneous).

Dated: January 17, 2017

BOND, SCHOENECK & KING, PLLC

By 

Raymond J. Pascucci, Esq.

Louis P. DiLorenzo, Esq.

Tyler T. Hendry, Esq.

Attorneys for Marist College

600 Third Avenue, 22nd Floor

New York, New York 10016-1915

T: 646.253.2300

F: 646.253.2301

TO: Mairead E. Connor, Esq. (via email)
Attorney for the SEIU Local 200 United
The Galleries of Syracuse, Suite 703
P.O. Box 939
440 South Warren Street
Syracuse NY 13201-0939

Rhonda P. Ley, Esq. (via email)
Regional Director
National Labor Relations Board
Niagara Center Bldg., Suite 630
130 S. Elmwood Avenue
Buffalo, NY 14202-2387

Neale K. Sutcliff (via email)
Hearing Officer
Region 3
130 South Elmwood Avenue, Suite 630
Buffalo, New York 14202-2387